**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

January 31, 2014

I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 31, 2014. Members present were Chairman Barry Stumbo, Joseph Smith, Janice Meyer, James Griggs, and Thomas Glover. Absent were: Noel White and Kathryn Moore. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; Tracy Jones, Department of Law. Staff members in attendance were: Barbara Rackers, Jimmy Emmons, Tammye McMullen, and Chris King (arrived at 4:10 p.m.)

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the November 22, 2013 and December 13, 2013 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Smith, and carried unanimously (absent: Moore and White) to **approve** the minutes of the November 22, 2013 meeting.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (absent: Moore and White) to **approve** the minutes of the December 13, 2013 meeting

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. Postponement or Withdrawal of any Scheduled Business Item - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

   Staff Comment - At this time, Mr. Emmons announced that there were two items on the agenda that he wanted to draw to the Board's attention. He said the first was on page 3 of the agenda, under item D.1 for conditional uses; the case for this was CV-2013-62, K. Wesley Farley; he pointed out that there was a typo on the agenda. He said it was a combination of a conditional use and a variance; and on the agenda, there was only the approval of the variance. The staff had recommended approval of the conditional use, and that it was correct in the staff report, and that there were also additional staff reports available for the audience for review.

   Mr. Emmons said that the second item on the agenda was on the last page of the agenda (page 6), item E1, case number A-2013-80, for Steve Perry for property 301-343 Burley Ave.; he noted that the applicant had withdrawn the request. He stated that the withdrawal request came in after the legal ad had gone out, but before the agenda was complete; so the staff had noted the withdrawal, and it did not require any action on part of the Board.

   Chairman then asked if there were any other postponements from the audience.

   At this time, Mr. Steven House came to the podium and stated that he would like to withdraw his application (A-2013-81: Steven F. House) to keep the building where it is currently located. He said he planned to tear the building down. He said he had already talked to his contractor to have it removed, and they informed him it will take about 30 days before they can start on it.

   The Chair noted the withdrawal, which did not require official action of the Board
   **A-2013-81: STEVEN F. HOUSE** - appeals for an administrative review to allow an existing garage/barn that exceeds the allowable square footage to remain where located/constructed, in a Single Family Residential (R-1B) zone, at 229 Eastin Road (Council District 6).

2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time

without further discussion. For any such item, the Board will proceed to take action.

B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

(Sounded items)

1. **V-2014-5: STEPHEN LEACHMAN** - appeals for a variance to reduce the required side yard on the north side of the property from 25 feet to 9'5" and a variance to reduce the required side yard from the south side of the property from 25 feet to 24 feet in order to rebuild a residence in the Agricultural Rural (A-R) zone, at 1198 Centerville Lane (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

a. Granting the requested side yard variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed residence will be situated no closer to the property line than the previous nonconforming structure, and there are many residences on nonconforming lots in the Centerville Rural Settlement that have side yards of less than 25'.
b. Granting the requested variances will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the lot is atypical for the Agricultural Rural (A-R) zone, and lots of this size typically does not have a side yard as large as 25', and the primary dwelling proposed is a principal permitted use to this zone.
c. The narrow width of these lots in the Agricultural Rural (A-R) zone is a unique and special circumstance that contributes to justifying the requested variances.
d. Strict application of the Zoning Ordinance would limit the ability of the appellants to construct a reasonably sized home on the subject property without an unorthodox orientation on this lot, and would perhaps be contrary to the stated goal of the Rural Land Management Plan to stabilize and enhance housing in historic rural settlements of Fayette County.
e. These variances have been requested prior to the issuance of a Building Permit, which is in the normal course, and in compliance with the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, being no closer to the northern property line than 9 feet, 5 inches.
2. All applicable permits, including a Building Permit and grading permit, if needed, shall be obtained by the applicant from the Division of Building Inspection on the subject property prior to any construction.
3. Prior to occupancy of the structure, an inspection shall be conducted by the Division of Building Inspection, and a Certificate of Occupancy issued.
4. The property shall not be used a junk yard (as defined in the Zoning Ordinance,) or as a storage site for business equipment or materials, and shall comply with any ruling or order by the court system.
5. All construction equipment and construction materials shall be removed from this site and stored at an appropriately zoned location prior to the issuance of a Certificate of Occupancy for this dwelling, and shall comply with any ruling or order by the court system.
6. A building permit shall be applied for within three (3) months of approval by the Board of Adjustment.

Representation – Mr. Stephen Leachman, appellant, was present, and he indicated that he had reviewed

the recommended conditions and agreed to abide by them.

Board Question – Ms. Meyer stated that she had a question for staff. She stated that in the staff report, staff made note of the fact that there is a question about how wide this property is, and that staff hadn't asked for a new property survey or a deed. She asked for clarification about the variance and the staff's thought process. Mr. Emmons said that the primary variance that is being requested is along the northern property line where the house is being requested to be 9 feet, 5 inches from the property line, and that line is not actually in dispute; there is a 25-foot side line requirement. He said that the staff, in working with Mr. Leachman, and in looking at the copy of his deed and what he was requesting; if you measure his lot as he did, from fence line to fence line, he has 80 feet, which means he would only need the northern side property variance. However, if you read his deed, he has 76 ½ feet; and if you do the math for the size of his building, it is possible that he could be about 6 inches off. The staff felt it was better for this particular request to go ahead and recommend granting a variance to 24 feet on the southern property line also, in an over abundance of caution, in case the deed is correct instead of the field measurements. He said there the deeds for Centerville date back to the 1800s, and there were other items in that deed that were also questionable; but it was close enough that there was not really a need to ask Mr. Leachman to do an actual new survey for the property. One would not typically be required with the side yard variances that he has requested anyway. Mr. Emmons went on to say that in the case of the southern property line, another factor that went into the staff's decision is that Mr. Leachman owns the property to the south. So essentially it is granting a side yard variance next to property that he owns. With all of these factors, the staff felt comfortable going ahead and recommending approval of both variances, even though there might be some question by a few feet on the width of the lot.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously(absent: Moore and White) to **approve** **V-2014-5: STEPHEN LEACHMAN** - appeal for a variance to reduce the required side yard on the north side of the property from 25 feet to 9'5" and a variance to reduce the required side yard from the south side of the property from 25 feet to 24 feet in order to rebuild a residence in the Agricultural Rural (A-R) zone, at 1198 Centerville Lane (Council District 12), as recommended by staff and subject to the six conditions outlined by staff.

2. **V-2014-6: DALE W. TOROK** - appeals for a variance to reduce the required side street side yard from 20 feet to 5 feet in order to rebuild and expand an existing detached garage in a Planned Neighborhood Residential (R-3) zone, at 1105 N. Broadway (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not be out of character with the existing neighborhood, as the garage expansion will align with an existing wall and hedge that have been on the property for approximately 60 years, thereby making the addition largely unnoticeable.
b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. The expanded garage will extend even with other features on the property (wall and hedge) that have existed for approximately 60 years.
c. The existing legal non-conforming guest house with a kitchen facility, and the significant 60' tall tree, create unique circumstances that prevent the expansion of the garage in any other direction, other than southwest toward the side street.
d. Strict application of the Zoning Ordinance would require the removal of either the legal non-conforming guest house or the significant tree to accommodate the desired expansion of the garage.
e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a design response to the unique circumstances of this property.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with submitted site plan and application allowing minor modifications, if required, by the Divisions of Engineering, Traffic Engineering, or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to a building permit for the garage expansion, prior to construction.

Representation – Mr. Dale Torok, appellant, was present, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously(absent: Moore and White) to **approve** **V-2014-6: DALE W. TOROK** - appeal for a variance to reduce the required side street side yard from 20 feet to 5 feet in order to rebuild and expand an existing detached garage in a Planned Neighborhood Residential (R-3) zone, at 1105 N. Broadway (Council District 1), based on the staff's recommendation of approval and subject to the two conditions.

3. **V-2014-7: ZAHRA TAVAKOLI/ERIC OSTERTAG -** appeal for a variance to increase the maximum allowable parking from 3 to 4 spaces in the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, at 511 West Third Street (Council District 2).

   The Staff Recommends: Approval, for the following reasons:
   a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, as the garage will be accessed via a rear alley and the adjacent property has a similarly constructed 4-car garage.
   b. The large size of the single family home, the existing paved area that could possibly accommodate up to 4 cars, the rear alley access, the adjacent industrial user, the restricted on-street parking on W. Third Street, and the similarly constructed 4-car garage on the adjacent property all create special circumstances that contribute to justifying the requested variance.
   c. Strict application of the Zoning Ordinance requirements would limit the construction of the garage to no more than 3 parking bays. The end result would be that the garage could be built smaller, or the additional space that would have been the 4th bay could be developed as storage.
   d. There is not a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; but, rather; a reasonable request considering the number of unique factors involving this property.

   This recommendation of approval is made subject to the following conditions:
   1. The applicant shall obtain a building permit from the Division of Building Inspection prior to the construction of the 4-car garage.

   Representation – Mr. Charles Penn, builder, was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

   Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

   Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously(absent: Moore and White) to **approve** **V-2014-7: ZAHRA TAVAKOLI/ERIC OSTERTAG** - appeal for a variance to increase the maximum allowable parking from 3 to 4 spaces in the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, at 511 West Third Street (Council District 2), based on the recommendation of approval by staff and subject to the one condition.

4. **V-2014-8: CHINGCHUN CHANG** - appeals for variances to: 1) reduce the minimum required parking from 1.5/unit to 1.0/unit; 2) reduce the minimum open space from 20% to 14%; 3) to reduce the minimum side yard from 10 feet to 5 feet; 4) to increase the maximum allowable height from a 4:1 height to yard ratio to a 6:1 ratio (30 feet tall); 5) to reduce the required front yard from 20 feet to 14 feet; and 6) to partially reduce the required vehicular use area landscaping in order to construct an apartment building in the Infill and Redevelopment Area in a High Rise Apartment (R-5) zone, at 155 Transcript Ave. (Council District 3).

   The Staff Recommends: **Approval of all the requested variances**, for the following reasons:
   a. Granting the requested variances should not adversely affect the subject or surrounding properties. All applicable building codes will be met, ensuring the health, safety and welfare of the occupants without causing harm to the adjacent properties. Furthermore, the proposed use and scale of the new building will be similar to other multi-family dwelling in the existing neighborhood.
   b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as every design effort has been made to reduce the requested variances to the minimum number necessary for such a small lot in the R-5 zone. Furthermore, the parking would still comply with the alternative parking requirement of 0.9 spaces/bedroom for this efficiency apartment building.
   c. The extremely small size and width of the lot (45' wide by 135' deep) is a special circumstance that does not generally apply to other R-5 zoned properties. It is the intent of the Infill & Redevelopment regulations to allow reasonable accommodations for efficient development that is proposed to be compatible with the context of the existing neighborhood.
   d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant. This

would have the effect of limiting the use of the property to only the single family home, which exists on the lot today, and it would be hard to recoup their investment in the property.

e. The requested variances are not the result of any willful violation of the Zoning Ordinance, but rather a design response to the severe limitations of the R-5 zone on such a narrow lot.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, allowing minor modifications, if required, by the Divisions of Engineering, Traffic Engineering, or Building Inspection during the routine building permit review process.
2. All applicable permits, including a Zoning Compliance Permit, Building Permit, and Certificate of Occupancy, shall be obtained by the applicant.
3. Prior to issuance of a final Zoning Compliance Permit, the applicant shall submit an administrative action record plat to the Division of Planning, recording the reduced building lines and other action of the Board.

Representation – Ms. Kim Bragg, architect, was present representing the appellant and she indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions – Mr. Griggs asked how it is that Mr. Chang decided that he needed to build a 6-plex; the quantity of variances was larger than what the Board is used to reviewing. He said that he has been on the Board 10 years, and one or two are normal, and they sometimes have three; but six variances on a small property is very worrisome to him. Ms. Bragg said that the neighborhood used to be small single-family homes. It has since been turned into an R-5 zone, which is the High Rise Apartment zone, and so it is gradually going through some changes. So the tight lot was actually two even smaller lots that he has combined for an apartment building. Mr. Griggs stated that it really didn't answer his question. He asked if Mr. Chang had options with a different size building or different density to be able to meet the requirements of the zone. Ms. Bragg then said that a single-family home is really the only thing that will fit there and meet the requirements, and it financially doesn't work. Mr. Griggs then asked what was on the property now; he believed it said there was a duplex, but it has three bedrooms and three baths, and he thought he saw three mailboxes on the front. He asked if this was not a duplex. Ms. Bragg asked if it is not is a single family home, and Mr. Griggs asked Mr. Emmons if this was a single-family home. Mr. Emmons said, to the staff's knowledge, it is classified as a single-family home. He also said that he does not dispute the fact that there may be multiple mailboxes on it, or the property is being used for rental; the staff was unaware of those facts.

Mr. Griggs then asked if Mr. Chang had bought this property recently, within the last year; but it doesn't work with the building that is on it, and if it was the case that he cannot put a building on it that does work for him financially without getting six variances. Ms. Bragg responded affirmatively. Mr. Griggs stated that that puts him in an awkward position and asked, if he were to put a 4-plex on it, if he would then be able to meet the parking and height requirements, bringing it down to four variances. Ms. Bragg stated that he didn't see that as being financially feasible. Mr. Griggs then stated that he paid $130,000 for it, and probably has $1000 a month coming in now. It is like a 7% return plus appreciation and depreciation, and asked what kind of financial return he thinks he should have. Ms. Bragg said she didn't know. Mr. Griggs said that he couldn't vote for this, but that it may pass; he just wanted an explanation as to why something couldn't be put there that didn't overflow onto the properties around him and that does meet the R-5 zone. Ms. Bragg said that the adjacent properties are 3-story apartment buildings, and so turning it into a 3-story apartment building was only going to be more in keeping the newer part of that neighborhood.

Mr. Glover stated he had a question for staff (noting that this is an unusual number of variances, and he understood from the staff report that one proposed variance led to another), but he was very concerned about trying to "shoe horn" this into a very small piece of property. He said he also felt uncomfortable with this, but wanted more of an explanation. Mr. Emmons stated that one bit of information for the Board that may or not have come across well in the staff report is that he had met with Mr. Chang and seen about four different versions of development on this particular piece of property, and it had been looked at in multiple ways. He went on to say that in looking at this particular piece of property with the R-5 zoning, the basic issue and the basic justification for all the requested variances is that the R-5 zone was really designed as a Suburban High Rise Apartment Zone where you would have a very large piece of property with an apartment building in the middle that went straight up. He said that reviewing the surrounding properties was one of the factors that went into the staff recommendation for this redevelopment project, because there really was no opportunity for the property to be combined with any of the other adjacent properties. At this time, he presented a slightly expanded version of the area on the overhead. He then said that the entire block that is bounded by Preston Avenue and Gazette Avenue was originally done in 20 and 25 foot lots; and, over the years, people have combined typically 6 of those lots together, to build over and over

again, the same three-story apartment building with the parking out front. Mr. Emmons said that for the last three of the shot-gun lots (referring to the display on the overhead), his first question to Mr. Chang was if he had ever talked about combining his lot with the two smaller lots that were there to do the same type of development; however, those two properties are owned by the University of Kentucky, and it is not viable that this lot would be able to be combined with any of the other lots. Mr. Emmons went on to say that this is a small lot for the R-5 zone; and when looking at what would be able to be done on it, if rezoned as an R-3 or an R-4, it would still require almost the same number of variances. He said if this were a 4-plex instead of a 6-plex, if required the same amount of parking, it would not require a parking variance; but looking at this from an Infill & Redevelopment standpoint, each of the units is very small (they are only 500 square feet per unit); it is an efficiency-style unit. One parking space per unit does seem to be an appropriate parking generator for such a small efficiency type of apartment. Mr. Emmons said that even though this is a small case, every two units that don't go on this property do need to go somewhere else in the community; being as close to the University of Kentucky as it is, and being an Infill and Redevelopment project, this was very much on the minds of the Division of Planning. He also said that each of the variances is related to each other; if the designer had changed the design to cut down on the total number of variances, then there would have had to be a request for a greater variance, and it would have been more of a variance than what is being requested for this case. He said that after looking at about four different development scenarios, this proposal appeared to be the one that had the greatest balance to achieve a development for this subject property, which is the one the applicant chose to bring to the Board.

Mr. Glover then asked if staff had talked with the applicant in detail about the design and the need for the variances. Mr. Emmons responded yes; and that in every way that he had looked at this particular piece of property, the only development that they could see to fit on this property without the need for any variances and keep the existing R-5 zoning, would be to keep essentially what is there. It could be rebuilt, but keeping the small structure that is there seemed to be the only option that would not require any variances

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover, seconded by Mr. Smith, and carried 4-1 (opposed; Griggs absent: Moore and White) to **approve** **V-2014-8: CHINGCHUN CHANG** - appeal for variances to: 1) reduce the minimum required parking from 1.5/unit to 1.0/unit; 2) reduce the minimum open space from 20% to 14%; 3) to reduce the minimum side yard from 10 feet to 5 feet; 4) to increase the maximum allowable height from a 4:1 height to yard ratio to a 6:1 ratio (30 feet tall); 5) to reduce the required front yard from 20 feet to 14 feet; and 6) to partially reduce the required vehicular use area landscaping in order to construct an apartment building in the Infill and Redevelopment Area in a High Rise Apartment (R-5) zone, at 155 Transcript Ave. (Council District 3), for the reasons recommended by staff; together with the variance explanation; and subject to the three conditions recommended by staff.

D. **Conditional Use Appeals**
(Cont'd Sounded Items)

1. **CV-2013-62: K. WESLEY FARLEY** - appeals for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone; and a variance to reduce the required parking from 5 spaces to 3 spaces, at 573-575 Maryland Avenue (Council District 2).

The Staff Recommends: **Approval of the Conditional Use**, for the following reasons:

a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Off-street parking is available to the rear of the structure, and the existing building can accommodate the proposed use without the need for any expansion. The subject property is bounded on two sides by other commercial uses, and is currently buffered from the only boundary that it shares with a residential single family use.
b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: **Approval of the requested Parking Variance**, for the following reasons:

a. Granting the requested variance should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. Based on the small size of this retail business, operation of this use should not require more than 3 parking spaces. If there is a need for additional parking, on-street parking is available on Maryland Avenue and even on the surrounding streets in this immediate neighborhood.
b. Granting the requested variance will not negatively impact the pedestrian-oriented character of the immediate area. It promotes the efficient use of an existing building and its historically graveled parking

area because the applicant is proposing to utilize the gravel parking and is not attempting to provide new surface parking on any nearby vacant land.

c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as this site was originally developed prior to the current requirements for parking lots, and there is a previous action of the Board allowing a retail use on this property utilizing the gravel parking lot.
d. The variance is not a result of the willful actions of the appellant, as his business needs do not warrant a full complement of 5 parking spaces at this location, and would essentially allow a continuation of the status quo on the site.
e. Requiring the full amount of parking for this use, where the requirement far exceeds the demand, will require an additional financial burden and hardship to the appellant in order to procure off-site parking agreements in perpetuity.

This recommendation of approval is made subject to the following conditions:

1. The antique/home furnishings store shall be established in accordance with the submitted application and site plan, except that a paved area shall be provided to accommodate a handicap parking space where it is easily accessible to the entrance of the building. The final design of the handicap parking space shall be subject to the review and approval of the Division of Traffic Engineering.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation; and prior to opening the antique/home furnishings store, a Zoning Compliance Permit from the Division of Planning, as well as a Certificate of Occupancy from the Division of Building Inspection, shall be obtained.
3. The applicant will maintain all existing vehicular use area screening on the property in accordance with the submitted site plan.
4. All signage shall comply with Article 17 of the Zoning Ordinance.

Representation – Mr. K. Wesley Farley, appellant, was present, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously(absent: Moore and White) to **approve CV-2013-62: K. WESLEY FARLEY** - appeal for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone; and a variance to reduce the required parking from 5 spaces to 3 spaces, at 573-575 Maryland Avenue (Council District 2), based on staff's recommendation of approval and subject to the four conditions.

2. **C-2014-2: MAXWELL STREET PRESBYTERIAN CHURCH** - appeals for a conditional use permit to permit a coffee house as part of the existing church use in a High Density Apartment (R-4) zone, at 319 Lexington Ave. (Council District 3).

The Staff Recommends: **Approval**, for the following reasons:

a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, and will not alter the character of the area. There are no exterior changes proposed to the historic McCauley House, which has been restored by the church over the past two decades; and this use will continue to be entirely church-related. Half of the adjoining land uses are university-related, and another quarter is church-owned properties, so the likelihood of any adverse impact to area residents from this new use would be minimal.
b. The requested conditional use will be clearly incidental and subordinate to the church's use of their campus. The coffee shop will occupy less than 5% of the church's total floor area, and will not appreciably raise traffic levels above what would be anticipated in this area. It would also provide an enhancement to the church congregation, and at the same time, provide an avenue for out-reach to church visitors.
c. All necessary public facilities and services are available and adequate for the proposed use, including off-street parking available on the church property, and on-street parking available on Lexington Avenue.

This recommendation of approval is made subject to the following conditions:

1. This church-related use shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. This portion of the church's operation shall be limited to the hours of 7:00 AM to 11:30 PM daily, and

shall operate only on the first floor of the McCauley House.
4. Signage for this conditional use shall comply at all times to the limitations of Article 17 of the Zoning Ordinance for the R-4 zone.

Representation – Mr. Nick Nicholson, attorney, was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (absent: Moore and White) to **approve C-2014-2: MAXWELL STREET PRESBYTERIAN CHURCH** - appeal for a conditional use permit to permit a coffee house as part of the existing church use in a High Density Apartment (R-4) zone, at 319 Lexington Ave. (Council District 3), for the reasons recommended by staff and subject to the four conditions proposed by staff.

3. **C-2014-3: ELIZABETH EPPERSON** - a request to modify conditions from a previously approved conditional use (extended hours and operation of jukebox during business hours) in a Neighborhood Business (B-1) zone, at 1418 Village Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:
a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site has consistently operated as a cocktail lounge with live entertainment and dancing since the live entertainment was first approved by the Board of Adjustment in 2003. Allowing an extension of the hours of operation of the jukebox until the new closing time of 3:00 AM is appropriate considering that this use is confined to indoors and is oriented to other commercial uses. Additionally, the Council adopted Ordinance No. 200-2007, allowing increased hours of alcohol sales after the Board's initial approval of this use in 2003.
b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:
1. The cocktail lounge shall be operated in accordance with the submitted application and site plan, recognizing the extended hours of operation (until 3:00 AM).
2. Live bands with dancing may be provided on Fridays, Saturdays and holidays from 9:00 PM until 12:30 AM. Dancing to a jukebox is allowed during the hours of operation of the business.
3. The establishment shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
4. The dance floor and band setup area shall be located either in the middle section of the suite or at the rear of the suite, in order to minimize any noise disturbance to nearby residential properties

Representation – Ms. Elizabeth Epperson, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (absent: Moore and White) to **approve C-2014-3: ELIZABETH EPPERSON** - a request to modify conditions from a previously approved conditional use (extended hours and operation of jukebox during business hours) in a Neighborhood Business (B-1) zone, at 1418 Village Drive (Council District 11), for the reasons recommended by staff for approval and subject to the four conditions outlined by staff.

E. **Administrative Reviews**

1. **A-2014-4: QUEST COMMUNITY CHURCH** - an administrative appeal of the Division of Planning's and the Division of Building Inspection's determination that a church entrance sign that is placed on a separate property constitutes an off-premise sign in a Light Industrial (I-1) and a Professional Office (P-1) zone, at 410 Sporting Court and 483 West Reynolds Road, respectively (Council District 9).

Representation – Mr. Tony Barrett, with Barrett Partners; was present representing the appellant.

Staff Report - Mr. Emmons stated that he would be representing both the Division of Planning and the Division of Building Inspection in his presentation. He went on to say that how this appeal had come about was that the applicant had requested a permit for the sign; the Division of Building Inspection denied the permit and the Division of Planning agreed with Building Inspection's interpretation of the Zoning Ordinance; The applicant then appealed under Article 7-6(e) of the Zoning Ordinance.

Mr. Emmons said that, at issue, the applicant, (Quest Community Church), 410 Sporting Court, has requested a sign for the church to be placed at 483 West Reynolds Road, which is not their property. He said that the applicant has detailed in a letter to the Board the reasons as to why they think that this should be allowed.

He stated that he had handed out copies of the applicant's request for the proposed sign.

Mr. Emmons noted that the proposed sign for Quest Community Church is actually on the property owned by the Ashland Avenue Baptist Church, along West Reynolds Rd. He said that the applicant submitted a final record plat that shows where the sign is to be located, as well as exhibits. He also said that Quest Community Church has an access easement through the other church's property, but the staff has opined that that is still an off-premise sign. Mr. Emmons then presented staff exhibits (an email), and said that the email is the official denial of the requested sign permit. He then said that staff also submitted the Zoning Ordinance sections that they felt backed up their determination on this.

Referring to Article 17-3, which is the definition section of the sign ordinance, he indicated he referenced the definition of an advertising sign, which is: "a sign which directions attention to a business product or activity, generally conducted, sold or offered elsewhere than on the premises where such sign is located." He stated that "elsewhere" is very important in this decision making process because it's an off-site sign that they are proposing; and therefore, the staff felt that it does meet the definition of an advertising sign. He said that times often, advertising signs will be in the form of a billboard; and when looking at the maximum amount of signage, the Zoning Ordinance essentially describes a billboard. It has always been the staff's and Building Inspection's interpretation, however, that if an advertising sign was allowed, and someone wanted something less than a billboard, it's still considered advertising sign. One can always get a permit for something less than the maximum. Mr. Emmons continued, noting that he also highlighted the definition of an identification sign, because that is the sign that establishes the identity of a building or a building complex, by name or symbol; or combines that name, street address, and/or management, and has no direct advertising value.

Mr. Emmons said that what the decision really comes down to the type of sign that they are requesting-whether it is an advertising sign or as an identification sign. He continued to explain the property where they are proposing to place the sign, is zoned P-1 (Professional Office Zone). Staff included; for the record, what signage is allowed for the P-1 zone, and an advertising sign is not one of those types of signs permitted in a P-1 zone; He said that the first time an advertising sign is allowed is in the B-3 zone, and is allowed in the B-4, I-1 and I-2 zones as well.

He then said that the staff further felt that the Board of Adjustment does not have the authority to permit a sign type that is not allowed in the zone; once the staff has made the determination that the applicant's off-premise is an advertising sign, that essentially prohibits the Board of Adjustment from granting any type of variance to approve it.

Mr. Glover asked staff if this was a jurisdictional determination. Mr. Emmons responded that it is an interpretation of the Zoning Ordinance and is covered in Article 7-6(e); it's within the Board's authority to interpret the Zoning Ordinance. He said that Article 7-6(e) is the last part of the handout which is the appeal process that the applicant has chosen to bring to the Board.

Mr. Emmons said that there is no disputing that the sign they are asking for is on a separate piece of property. He stated that there is also the question of unintended consequences. Staff doesn't have anything against the sign that they are asking for; and even tried to find ways to help them get the signage that they are requesting; however, if this were looked at as a car lot, and they wanted to put their identification sign on someone else's property, there would be no question that that is an advertising sign. It is an off-premise sign, advertising a use on a different lot; and at its essence, that is what had been presented to the Division of Building Inspection in the form of the request for the sign permit that was denied. Mr. Glover said that he understood that the property where the sign is going to be placed is on an

easement that the church does have. Mr. Emmons confirmed that the church does have an access easement through the Ashland Avenue Baptist Church property. Mr. Glover then asked if the Ordinance gets interpreted to the extent that an access easement is or is not a property interest. Mr. Emmons replied that the staff has interpreted that it is an off-site sign, even with the access easement; and, taking that approach, it would be easy for anyone to make a private easement with other property owners to get off-premise signs.

Mr. Griggs asked Mr. Emmons if this was determined to be an identification sign and not an advertising sign, if it would be allowed to be there. Mr. Emmons stated that he believed that the sign that was proposed meets the setback and the size restrictions for an identification sign in the P-1 zone. He said that he cannot tell exactly whether it does or doesn't. The staff they did not get into that, because the threshold question is whether it is allowed or not; but he believed that it would otherwise be compliant. Mr. Griggs then asked if it would be an identification and not an advertising sign if they struck the word "church: from the sign; so it wouldn't say Quest Community Church, it would just be Quest Community, or only Quest, so that people that knew where they were going would find the right driveway to use. Mr. Emmons said that the primary purpose of the sign is to let people know that Quest Community Church is in the rear. Mr. Emmons referred to the staff's emails and stated that one of the staff's suggestions was to actually consolidate the land for the access easement so that Quest Community Church owned that land. It would not be an off-premise sign in that case; however, that would be creating a flag lot, which is something that typically the Subdivision regulations do not promote and typically disallow. But considering there is the physical roadway that is used, that there could be some justification for going ahead and allowing the flag lot in this instance because of the nature of the access easement. In that case, if they owned the property, there would be no need for Board of Adjustment approval, because the sign permit would likely have been able to be issued for an identification sign.

Mr. Emmons stated that they also discussed that if the sign were further back into the property, and not visible from the public right-of-way, technically, it would not be regulated as a sign, and they could have those additional identification signs further into the property. Mr. Griggs then said that his question wasn't actually answered; he wanted to know if reducing the verbiage on the sign, so that it wasn't even identified as a church, would stop it from being an advertising sign. Mr. Emmons said that he believed that anything that informed the public that Quest Community Church is back that way would be an advertising sign, by the Zoning Ordinance.

Mr. Griggs then asked if staff was concerned about setting a precedent, to which Mr. Emmons replied affirmatively. He said that, although that sign or a similar sign would be attractive, staff feels that it would be a very bad precedent to set.

Mr. Glover asked if the sign was disallowed, what remedies the church would have; if it would be a zoning issue, and if they would t have to move the sign back. He asked if that would comply; and if so, how far back it would have to go. Mr. Emmons said that as far as moving a sign back onto Ashland Avenue Baptist Church's property, it would need to be far enough back so that it would not be visible from the street right-of-way. He went on to say that the other possible remedies would be either the consolidation of the property to their property (hence they own it), or to ask for a Zoning Ordinance text amendment to clarify that under these circumstances, the sign would be allowed.

Mr. Glover then asked staff if "site", "off-site", or "onsite", are defined terms. Mr. Emmons said that they are not, but the staff is using the working in the definition of the advertising sign, where a business product or activity is conducted else where other than the premises on which the sign is located.

Mr. Griggs said that it probably goes without saying that staff has worked back and forth with the applicant and nobody has a solution. Mr. Emmons stated that he didn't know what their barriers would be to the consolidation. It could be that Ashland Avenue Baptist Church is not willing to sell, and the government cannot force two property owners to trade property. With regard to a Zoning Ordinance text amendment, staff hasn't had any serious discussion about that with the applicant or anyone in the Division of Planning office. It was his belief that they wanted to see how this process played out first before they looked at other options.

Applicant Presentation – Mr. Barrett stated that he had Pastor Dave Griffith with Quest Community Church and two representatives from the Ashland Avenue Baptist Church, who would probably want to address the Board as well; and he also stated that there were members of the Quest Community Church in the audience for support as well.

At this time, Mr. Barrett distributed some handouts to the Board. Mr. Barrett then presented an illustration

on the overhead (exhibit one) of the proposed sign for the Quest Community Church where Wellington Way, meets West Reynolds Rd. He said that is an existing entrance that is cut in with the construction of Wellington Way that was intended for access to the development.

The next overhead (exhibit two) that Mr. Barrett presented provided an orientation as to where the church is located. He explained where Quest Community Church was located relative to New Circle Road, Wellington Way and the circle at Wellington Way, Ashland Avenue Baptist Church, and then showed the sign location. He said that there is an existing road cut at that location and a break in the median. He indicated the location of the driveway; phase two of the parking lot, and then the existing parking lot of the church. He said that the highlight of this exhibit is the access drive, and that it is an access easement (60-foot) through the Ashland Avenue Baptist Church, to serve the Quest Community Church property.

On exhibit three, Mr. Barrett explained the development plan of Ashland Avenue Baptist Church. He said that the development plan showed the proposed parking lot, as phase two; and the driveway coming in and tying in, which goes down to Wellington Way. Mr. Barrett went on to say that when this proposal was being submitted to the Planning Commission, part of the recommendation of the Planning Commission was to make this connection; so that was a consideration at the time to use Wellington Way as an access point for the expansion of Quest Community Church.

Exhibit four again showed the development plan for the Ashland Avenue Baptist Church. He noted the detail on that development plan showing Wellington Way and the proposed access easement. He said at that time it was anticipated that there would be an identification sign at that location, which is unique because typically signage is not indicated on a development plan. He said that, in his opinion, it was anticipated that there would be an identification sign at this location.

Mr. Barrett then displayed exhibit five on the overhead, noting that it was the layout of the access easement, Wellington Way and the location of the sign. He said that it is a serpentine drive in a 60-foot-wide easement. He said that they tried to make it more of an experience than just a runway shot, so they have incorporated some landscape areas to enhance the quality of the experience back to the parking lot. He then said that his direction from Quest Community Church, is to make it as aesthetic of a drive as possible, focusing more on the aesthetics to make it a really welcoming experience; and that is the effort they are trying to do from the entrance all the way back to the destination and entrance to the church.

On exhibit five, he noted that the top drawing was Ashland Avenue Baptist Church, as viewed from Wellington Way, and their entrance sign and driveway that comes in off the circle on Wellington Way; the bottom drawing was Ashland Avenue Baptist Church Wellington Way, which is the entrance that exists, cut into Wellington Way, and the driveway to Quest Community Church (in the background). He said that it was a good illustration of how it does need some reinforced identification that one is entering the Quest driveway, because the Ashland Avenue Baptist Church is such a predominant view in that perspective.

Exhibit six showed the Quest Community Church entrance off of Sporting Court. Sporting Court is a cul-de-sac, and the drive access will enter on the side. Mr. Barrett stated that Quest has no free-standing signage; they have the permitted building mounted signage; so they have not utilized their permitted free-standing sign at their existing location.

Mr. Barrett then displayed exhibit seven of a detail of the entrance showing Wellington Way and the median, with the sign being proposed in the median at that location. He said that the sign is 8 feet by 5 feet; (maximum permitted 40 square feet, for an identification sign) and is a set 10 feet back in accordance with an identification sign requirement.

Exhibit eight was a review of the sign regulations, and Mr. Barrett referred to the first item- the sign regulations intent. He said that their perspective (and why he believed the Board has the authority to approve their request) is in the definition of what they are; i.e., are they an identification sign or an advertising sign. He went on to say that he didn't believe that they meet the definition of an advertising sign, or meet the practice of what an advertising sign is or how it is being utilized in Lexington (and probably throughout the United States) as a billboard. He said that if the Board looks at the intent of the sign regulations (in which he had highlighted the important parts on the exhibit), it is a legitimate need for identification (in their instance, identifying the primary entrance to Quest Community Church); the promoting signage that does not unduly distract or detract from the overall aesthetics of the community. He believed the sign they are proposing meets that intent; it protects property values, he believed; adequately identifies a property, and improves public safety. He said that good signage improves public safety; knowing where to go, where to turn; and when one knows where to enter a property, it enhances public safety. Mr. Barrett then pointed out that the bottom on the exhibit provides, in terms of nature and scale, the activities to be

identified. He stated that he thought their sign was reasonable; it's in scale of what they are proposing on Wellington Way and the proposed use.

Mr. Barrett then presented the page 17-2, and indicated that he had highlighted the identification sign definition. He said that, absent from this information, it has to be on the property; it doesn't say that it has to be on the specific premises; it just gives the intent and the purpose of the identification sign. What they are providing is an identification to the Quest Community Church entrance. He said that the advertising sign (as staff indicated), does say that advertising signs are on someone else's property, but it does not indicate that an identification sign is required to be on the property.

Mr. Barrett then said that he believed the sign should be permitted (referring to the next page [17-10 of the Ordinance] under the Professional Office permitted signs), they meet those requirements. He noted that they are not in excess of 10 feet high; and; as mentioned earlier, this would be Quest's one identification, free-standing sign. They meet the 40-foot maximum square footage and are outside the 10-foot setback.

He said, with regard to advertising signs (the next few pages identify adverting signs), they are quite different; they have an allowance of 40 feet in height (Quest is nowhere near there); they also allow it to be 400 square feet in area, and that basically defines a billboard.

Mr. Barrett indicated that on the last page of his handout are typical billboards around town, and they do exactly what the definition for an advertising sign does: they are for off-site advertisement, they are at a scale for advertising on a highway, and some actually give directions as to where to go. He stated that is not what they are trying to do. He said that they are just saying this is the entrance to the church and they are identifying that this is the location.

Mr. Barrett went on to say that they believe they have an identification sign; they are not advertising, but are identifying; for public safety, as to where one enters for Quest Community Church. He stated that he had presented the Board with a copy of the sign that they are proposing, and believed it to be an identification sign.

Board Questions – Mr. Glover asked Mr. Barrett if he was concerned about the precedent of the decision that they might make on this application. Mr. Barrett said that that is always a concern; but he thinks what makes them unique is that they are within an access easement, and the access easement is a direct entrance into their property. He also said that it is not allowing access to multiple properties; it is pretty much the church's properties. He said that he could see that as a means of separation regarding setting a precedent, nothing that he did not agree with Mr. Emmons that access easements are easy to come by. He said that there is a mutual agreement between two parties and they're not as freely given, as just by asking.

Mr. Barrett said that the other concern that Mr. Emmons raised was about consolidating the properties; and Quest Community Church also proposed that to Ashland Avenue Baptist Church. They were not in agreement, but Quest is happy that they have an access easement that directs traffic to the property.

Mr. Glover then asked if the current access to the church is on the other side of the Ashland Baptist Church (from Sporting Court). Mr. Barrett responded affirmatively. Mr. Glover then asked, if one was visiting the church from Sporting Court, if they would be able to drive back to the proposed new parking lot. Again, Mr. Barrett responded affirmatively. Mr. Glover then asked if there was any signage at Sporting Court to identify that it is an entrance to Quest Church. Mr. Barrett stated that there is not.

Mr. Griggs stated that one of Mr. Barrett's arguments was that the access easement wouldn't be accessing other properties; but, in fact, when Ashland Avenue Baptist Church expands their parking lot, then both would be using this. He asked if there will need to be a change in the signage then. Mr. Barrett said that that is a consideration. He stated that he thought they were interested in sharing the sign, but they will coordinate between the two churches as to how that signage is permitted. He went on to say that they have their existing sign at the circle, and they may want to address that. He said that when he was speaking of properties, he was speaking of the property beyond the property that is passed through; it's not multiple properties that are tied into the easement.

Citizen Comments – Mr. Roger Holland, representative of Ashland Avenue Baptist Church, trustee and Chairman of the Deacons, stated that he just wanted to give a little background about what Mr. Barrett has already explained. Mr. Holland said that about 20 years ago, when R.J. Reynolds owned the property and it was parceled out to developers, Ashland Avenue had bought about 48 acres of that property. The original footprint reflected the access because the intent at that time was to have a senior living facility there, a university or a small bible college, and have football and soccer fields. He went on to say that over time

they have not lost that vision, but what did come about was that Quest became a neighbor. He said that Quest bought a parcel of land (as illustrated and highlighted on the map). This took place about six years ago; and in that agreement and the deed, there was the option for Quest Community Church to build this road that was part of their phase of the development. He said that it was an agreement that both of the churches actually put to print. Mr. Holland said had that not happened (i.e., at some point if they were putting a senior living facility on that property, or building football/soccer ball fields), he would make an assumption that they may have had to come to the Board and ask how they would be able to utilize that means of access to reach those areas of the property; it is not the primary part of the property that they currently use. Mr. Holland said that they do have long-range- plans, which could be 3 months, 3 years, or even 10 years from now, when the plan would be to have parking lots that could be accessed through the area. He said that at the time that Quest Community Church bought that parcel of land, they agreed that if this roadway came about, that they would both use that road to access each parking lot. Mr. Holland stated that they understand why Quest is asking to do this; because there is only one way into their place; and there are is a lot of traffic issues because they are at the end of a court with other properties that are utilized. A lot of in and out traffic is coming onto Ruccio Way and coming down to Sporting Court.

Mr. Holland said that some of the concerns that Ashland Avenue has are: 1) Mr. Griffin asked if Ashland could support this, and they did so by submitting a letter about the final decision from this Board; and ultimately, if the Board sees fit to grant Quest the permit to do this sign, there will be other people involved (i.e., the Wellington Maintenance Association Board, that oversees the kinds of signs that are used. He asked if the Board chose not to permit them to put this sign there, what would Ashland Avenue Baptist Church need to do if they decided to implement their long-range plan in the future. He asked if this would be considered to be an off-site issue; how do they mark this so that people would know how to get to different things. He then stated that their question is (they wouldn't obviously want to put up something that would obstruct the view of traffic when they come up Wellington Way), that they know it is important for them if this is going to be their primary means of getting in and out into their worship center; but they want everybody to be mutually understanding that Ashland would be using this road too at some point or another. People need to know that this is the way to get to both churches.

Board Questions – Mr. Griggs asked Mr. Holland if he was comfortable with the proposal and if he could work out the issues when they need to add identification in the future- that they will just work it out then. Mr. Holland stated they are not comfortable with that sign because they think it is important right now, and that is part of the future development. He said that they want people to know that when they turn off of Wellington, they cannot get to Ashland yet; and so that is something that they (Quest and Ashland) are going to have to work through, and if they have a mutual agreement and work together to accomplish the good for the community, and those people traveling Wellington Way, then they are not opposed to this. Mr. Holland again said that Ashland's concern is what is going to happen if the Board approves this; are they going to have to "jump through some hoops" down the road when they need to put a sign next to the theirs that says "Ashland Avenue." He said that they are already having a hard time getting two signs and wouldn't want to have to put three; it seems like right now they need one sign that says Ashland Avenue and Quest Community Church; and people that travel Wellington would know they can get to both places. Mr. Griggs then stated that right now, Ashland Avenue does not have access to their church or parking lot from that, which Mr. Holland confirmed. He said that the cut out was put there with the intent based upon the original footprint when they bought the parcel of land.

Mr. Griggs then said that he was trying to figure out how the Board could take action on this today, without Mr. Holland feeling that he is "boxed in". He asked if they (Ashland) needed to make an arrangement with Quest at this time, or if it needs to be continued for a month until they can come up with an arrangement. Mr. Holland said that he didn't think they did; and the reason is that their letter (in the Board's packet) addressed this issue; this has to be resolved by the 30th of June of 2014. He also said that Ashland Avenue has to be comfortable with the sign that is going to be put out there if the Board permits them to have a sign.

At this time, Mr. Barrett returned to the podium and stated that Pastor Griffith would like to comment and also go through a little bit of the traffic movement at the church with their activities and services.

Pastor Dave Griffith, with Quest Community Church, stated that with regards to access to the property at this time, he and Mr. Holland have been working together as to how to establish the signage and meet all the regulations that are in place at this time. If and when that entrance is put in, and their (Ashland's) parking lots are there, Quest can be and has been working on having an agreement as to how the signage would be placed. He said directional signs (the proposed sign is an identification sign), once people turn onto the property, can direct people into either entrance. This sign could even be modified at that point to represent Ashland and Quest, and they would work that out between them. He said the other thing that he

wanted to mention was the whole reason for this development; and to his understanding; at the point of re-zoning and the purchase of this property, the Planning Commission noted the urgency of this situation- i.e., they are continuing to see heavy traffic on other nights of the week and not just Sunday morning because of the other uses on Ruccio Way and Sporting Court. He said it was at the time when the plat was issued, that they would allow the number of parking spaces for the current access through the cul-de-sac of 410 Sporting Court. The statement was made at the time, when the parking lot is expanded, there is going to be that much more traffic flow onto Sporting Court; which would create that much more of a traffic issue. It was almost mandatory for the easement to connect those lots, so they were going to be adding an additional 250 spaces. It was in their desire to allow a spot where the traffic issues that are on Sporting Court will be relieved by this. He said their concern was, if they just open up the entrance, there would be concern about where to go. He stated that Ashland Avenue and he had talked about how to designate that so people would know where they were traveling, to create a traffic flow in the right direction, and they can relieve some of the pressure off of Sporting Court.

*Note: Chairman Stumbo declared a brief recess at 2:51 p.m. The meeting reconvened at 3:00 p.m. with the same members in attendance.*

At this time, Mr. Emmons returned to the podium and stated that the staff does have one additional comment about the subject property. He said that the staff would like to point out that they stand by their recommendation that this is an advertising sign; however, based off some of the additional information that was presented at the hearing, as well as consultation with the Law Department, the Law Department had crafted some findings in addition to Mr. Barrett's findings. He said the staff could agree to most of the applicant's findings. Some things that came out during the hearing were not in the original findings: that the access easement is a 60-foot-wide access easement, and it's over 1000 feet of roadway that could have otherwise been presented as a private street (i.e., could have met the definition of a private street). He said that staff does still disagree with the applicant regarding their item #2, that this is an identification sign; but the Law Department had provided a finding that the sign, as proposed, is more similar to an identification sign than an advertising sign, which are significant factors that came out in the hearing.

Mr. Glover asked, when the Board is asked to decide an administrative decision (administrative appeal), what the question is that the Board is answering. He asked if the Board is granting the appeal; and, if so, what remedy/question is there. Ms. Jones stated that she thought what they are asking is under the provisions for the Board of Adjustment, i.e., to review the decision of Building Inspection about the permitting of the sign. They disagree with the interpretation that Building Inspection made, so they are asking the Board to take a look at that interpretation, and determine whether or not the Board thinks it would be in compliance with the ordinance so that it could be permitted.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously(absent: Moore and White) to grant the **approval** and interpret the ordinance in the case of **A-2014-4: QUEST COMMUNITY CHURCH** - an administrative appeal of the Division of Planning's and the Division of Building Inspection's determination that a church entrance sign that is placed on a separate property constitutes an off-premise sign in a Light Industrial (I-1) and a Professional Office (P-1) zone, at 410 Sporting Court and 483 West Reynolds Road, respectively (Council District 9), based on three findings of facts, presented by the Department of Law:

a) The intent of a sign ordinance, pursuant to Article 17, indicates that the sign ordinance is to address a legitimate need for identification, and improve public safety as an entrance location.
b) This sign proposal is more like an identification sign than an advertising sign, so long as it is built as depicted in the drawings submitted by the applicant that are part of the record.
c) That the nature of the access is 60 feet wide, approximately 1000 feet long; and it is, in fact, similar in nature to a private street or drive, and creates a circumstance in this case, to identify this entrance as an entrance to the church and the church property.

And based on the reasons that are in Mr. Barrett's letter to the Chairman, except for reason #2; (deleted below) and those are:

1) Identification sign is permitted in the Professional Office (P-1 zone).
~~2) The proposed sign meets the required 10-foot setback in accordance with the Zoning Ordinance.~~
3) The proposed sign does not exceed the permitted 40 square feet per the Zoning Ordinance.
4) The sign does not exceed the 10-foot height limit of the Zoning Ordinance.

5) The proposed sign is the only free-standing sign identifying Quest Community Church, (the Ashland Avenue Baptist Church also has one free-standing sign), and the Zoning Ordinance allows one free-standing identification sign, per building.
6) The identification sign is located within the access easement providing direct access from the public street, Wellington Way, to Quest Community Church; location of the sign will enhance public safety through improved way finding for the public looking for Quest Community Church; the sign will distinguish the Quest Community Church entrance from the Ashland Avenue Baptist Church entrance; the Ashland Avenue Baptist Church supports the Quest Community Church sign request.
7) The proposed access is in accordance with the approved development plans for Quest Community Church and Ashland Avenue Baptist Church; the proposed access serving the Quest Community Church will significantly help distribute an organized traffic pattern during peek periods such as Saturday and Sunday services and special events.
8) Advertising signs; as permitted in the Highway Services Business Warehouse/Wholesale and Industrial Zones; are allowed to be 400 square feet and 40 feet in height, significantly larger in scale than the proposed identification sign conforming to the signage requirements in a Professional Office Zone.

F. **Conditional Use Appeals**
(Discussion items)

1. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a 6-month review of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

In October of 2012, the Board approved a conditional use permit to operate a night club with live entertainment and dancing. One of the conditions for approval was a 6-month review of the use (after issuance of a Certificate of Occupancy), in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

a. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
b. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
c. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
d. That no business activity, private or public, be conducted on Sunday.
e. That some type of food items and a menu be provided on the premises.
f. That off-site parking is provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff is apprised of the location.
g. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
h. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
i. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
j. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
k. The use shall be reviewed by the Board 6 months after approval.

Representation – Mr. Al Grasch, attorney representing appellant, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Report – Mr. Emmons reminded the Board that he did hand out communications for this case; one being an email from Council Member Diane Lawless with information from the police department, and then the other one was from Mr. Daniel Montague. He stated that there is no official staff report for this 6-month review of the conditional use. Mr. Emmons went on to say that during the six months, this property has obtained their Certificate of Occupancy. He also said that staff has not received any official zoning complaints about this property; however, as indicated in the letters, there is some neighborhood opposition.

Representative Comments – Mr. Grasch said that the opposition and he have come to an agreement that Sims Entertainment would have another review in six months, and that another condition that states there will be no under-age parties on the property will be added. He said that they have had parties for people 18-21 or 18 and up, but no alcohol served to any of the minors. They did have a small number of those parties for business and various other reasons; however, they have decided to no longer have any of those parties. He said that apparently it is a belief that some of those parties did result in some of the disturbances in the neighborhood. Mr. Grasch said that was an easy agreement and there will be no more under-age parties.

Opposition – Ms. Sally Warfield, Legislative Aide for 3rd District, said that it was the 3rd District office's position that they were in opposition; but after having spoken with constituents and the property owner, they have agreed that if two more stipulations are added (one that there will be nobody 18-21 attending any parties at 815 Euclid, and also that there is another six-month review); they will not oppose the conditional use permit at this time.

Mr. Grasch said that he believed that there were some words misspoken and indicated that it was mentioned there would be no 18-21; however, they do want to have 21-year-olds; but no one under 21 on the property, of course. He then pointed out that the opportunity may have a jurisdictional question (i.e., this is being presented as a review of the conditional use permit. He said he doesn't believe that is why they were before this Board. He said that they were there to review what was done six months ago (but actually done in October 2012). Mr. Grasch said that this conditional use permit has existed since 1991, under previous owners; what happened was when Mr. McCord got the conditional use permit in 1991, the conditional use permit stated that the bar could stay open until 1 a.m., which was the legal time at that point. He said that in 2007, the council extended bar hours until 2:30 a.m. He stated that they came back in October 2012, merely to ask that the conditional use permit they already had be amended to allow them to stay open that extra hour and a half. That amendment was approved, and it was approved with a condition that they come back in six months (which ended up being 14 or 15 months) for a review; and staff had recommended ten conditions that needed to be met during that period review (staff recommended 9 or 10, and during the hearing another one was added). He then said that the purpose of coming back to the Board was not for a review of the conditional use permit; it was for a review of that additional hour and a half, and more particularly, whether those ten listed conditions had been met. So that is the proper stance of what they will be doing when they come back in six months, or for whatever is being considered; as opposed to a review of the conditional use permit in its entirety.

Mr. Griggs stated that he thought that the Board should hear from Zoning Enforcement, if there have been any reported violations of the ten conditions; and since there have been so many police reports to the property in the last six months, if the Board is allowed to add another condition. He said that the neighborhood is upset because of the behavior that goes on inside and outside of the bar; and if that needs to be regulated as a condition to this conditional use (if there is a way to add that), the Board might want to consider it. Mr. Marx responded that since the conditional use was amended in 2012, Zoning Enforcement has not had any official zoning complaints in their office. He said that they were aware that there were concerns that were addressed to the Council office, but there were no official complaints with the Zoning Enforcement office.

Ms. Warfield, at this time, returned to the podium and stated that she wanted to point out that it does say in October of 2012 that the Board approved a conditional use permit to operate a nightclub with live entertainment and dancing, period; not just the additional hour and a half. She said that one of those conditions for approval was the six-month review, and to determine if surrounding property owners had experienced any adverse impacts. So it is not just the hours, but, the Conditional use for the live entertainment and dancing that was established in October 2012; and it did include the provision that there would be no adverse impacts from the use to the surrounding property owners. Mr. Griggs agreed and said that in the last part of condition number 10, it says that the emissions from this bar would not create a nuisance to the surrounding neighborhood. That doesn't just need to mean sound; it can mean everything that is going on outside their door. He then said that it might be in six months, when the Board reviews this, that if there is the same kind of police report that is in front of the Board during this hearing, it may mean that they are not meeting their conditions, and the conditional use could be subject to being lost.

With regards to Mr. Griggs' question about more conditions being added, Ms. Meyer asked if the Board has the authority to do that. Ms. Jones stated that she believes that the Board does have that authority because both parties have agreed to it. The Board can just add conditions 12 and 13, as the parties agreed to have 2 morel conditions added; an additional six-month review, and that no under-age parties for the ages

between 18 and 20 would take place at this location.

Ms. Meyer then stated that she had a thought related to the nature of the complaints that have been noted in the handout. She said that she was thinking about clean-up: there is broken glass, and she asked who is responsible for the clean-up as far as that and whatever else is on the sidewalks that people wake up to. Ms. Warfield said that part of the discussion that she and Mr. Grasch had "informally" was that the property owners would ensure that there is extra clean-up that happens after an event, or regular operation; they are not including that as one of the terms at the hearing (just an informal agreement). This is why they are asking for an additional review in six months because they want to see if the informal stipulations can hold; and, of course, if they don't, they will be back opposing this again.

Mr. Grasch returned to the podium and stated that there are several bars and nightclubs and restaurants that serve alcohol in the area. In fact, one of the discussions that they have had was with the Chevy Chase owners, who said that the problems have persisted in recent weeks; but they haven't been open in recent weeks. He said that they are only open on Friday and Saturday nights. He said that as to litter (glasses and cans), they do not allow that outside their bar; they have someone at the door; and no one is allowed to pass outside the door with anything in their hand. He said, on the other hand, one of the facilities next door to them has a patio; and the patrons are allowed to have containers outside. He said that his point is that there are multiple bars and restaurants in the area, and he thinks it is unfair to assume that all is attributed to just their bar when there are four or five in the area. Mr. Griggs then noted that the police report is address- specific. There are 15 calls from the police department, and no other address has more than five; and only two others have five out of all the addresses. He then said that it is fairly conclusive that their bar is the "lion's share" of the problem on the street. Mr. Grasch said that he understood, but did not believe that all 15 are attributable to their bar, but it is the type of thing that would be fairly attributable to them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Smith, and carried unanimously (absent: Moore and White) to approve **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a 6-month review of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3), and to add two additional conditions as follows:

12) No one under 21 is allowed on the premises.
13) This case is reviewed in six months.

2. **C-2014-1: THE LIVING ARTS & SCIENCE CENTER** - appeals for a conditional use permit to expand the existing facility (community center and accessory parking) in a Planned Neighborhood Residential (R-3) and a High Density Apartment (R-4) zone, at 362 (aka 364) N. Martin Luther King Blvd. (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the Living Arts & Science Center has successfully operated at this location for over 40 years. Furthermore, adequate and more efficiently designed parking will be available on site; and on-street parking is available on several of the surrounding streets to accommodate overflow parking, if needed. In general, the hours of operation are primarily during the day, with some classes and events scheduled in the evenings, which should not cause a nuisance to the surrounding residential neighbors.
b. All necessary public facilities and services are available and adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process, subject to the review and approval of the Divisions of Building Inspection, Traffic Engineering, and Engineering.
2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.

Representation – Mr. Chris Howard was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Opposition – Mr. Mick Jefferies, 239 Campsie Place, began his statement of opposition with a PowerPoint

presentation. Mr. Jefferies said that his family has lived on Campsie Place for 8 years, and they are the only direct, fenced neighbor to the Living Arts and Science Center. He stated that he wanted to share some basic objections that they have. Mr. Jefferies stated that one of his issues is that the Living Arts and Science Center is requesting to build an 11,000 square-foot, 30-foot-tall building, as close and as tall as zoning will allow, which adversely obstructs the view from his home. He also noted that the LASC is requesting to put a non-residential style addition, 10 feet from his family's home. Mr. Jefferies' PowerPoint presentation was his explanation of how the wall of the Living Arts and Science Center would adversely obstruct the view from his residence. Mr. Jefferies stated that they would like for the building to be pushed back about 25 feet from their property, or rearrange the project and move the building somewhere else. He said that they would lose property value, quality of life and light, and potentially they would lose enthusiasm, respect and fondness for the LASC.

Mr. Griggs noted that he thought he saw this design approximately a year ago, maybe two, and asked Mr. Jefferies if he had been in constant communication with LASC. Mr. Jefferies stated that they have not.

At this time, Mr. Tom Conn, 218 Campsie Place, approached the podium. Mr. Conn stated that he had lived at his address for about 35 years, and his house is the house that will face the LASC. Mr. Conn talked about the past history of construction to the Living Arts and Science Center. He stated that this new wall to be built would not bring any quality to the neighborhood, and that he is opposed to this.

Appellant Comments – Heather Lyons, Executive Director of the Living Arts and Science Center, stated that she came to the LASC 8 years ago, after having lived in the neighborhood on Martin Luther King, adding that several other staff members live there as well.

Ms. Lyons stated that the center is in its 45th year of operating as a non-profit organization; for 42 of those years, it has been at 362 North Martin Luther King Blvd It's current location was at the donation of the Kincaid family, who built the house in 1847, and its descendents donated the house for the center to use; they used it for 10 years; and then they donated the house and the property to the organization.

As a matter of history, the Kincaid family (who were Abolitionists), built houses in the neighborhood. They built houses on Campsie Place; they provided housing for freed slaves (following the Civil War); which is now the East End. She said that the history of the house and the neighborhood has been extremely important to the organization throughout its history.

Ms. Lyons said that over the last several years, they have experienced considerable growth with the programs they provide; a great deal of which are provided in the neighborhood. She stated that they provide free programs in five elementary schools, two of which are in the immediate neighborhood, and many more. She stated that the Living Arts and Science Center was instrumental in getting the neighborhood association started; and ever since it started, the meetings have been held at the LASC; so the organization is deeply embedded in the community. She went on to say that when they began realizing that they needed to do something to respond to the overburdening of the historic building of the grounds and the programs that they were offering; it was with the neighborhood in mind, and with transparency for their process.

She said that they have had extreme support from the community, hundreds of donors which have allowed them to get to $4.2 million of their $5 million campaign; part of that funding is going to support their endowment fund to help maintain the property forever. She stated that they have been supported through the city through the storm water quality grant.

Ms. Lyons spoke on the scholarship program that they provide for low-income students that come in and participate in their classes; a great number of those come from their immediate neighborhood.

At this time, Mr. Chris Howard came to the podium and spoke on the design process. Mr. Howard presented an exhibit on the overhead and stated that he wanted to briefly walk the Board through the design process and the steps that had been taken for the building project. He said that it all starts with a schematic design. During that time there is programming; there is building and developing rough forms, shapes, and adjacencies; and it is really important that all the "stakeholders" be involved at that time; which was why there was a community charette held as part of that schematic design, and those results were posted on the center's website for public consumption. Mr. Howard then went on to say that following that schematic design phase is the design development phase. During this phase, all those rough shapes get "honed" in on and become more detailed. He said that the design happens is in the design development stage. He stated that after the design development occurred, those drawings were presented at a community breakfast at the Living Arts and Science and Center.

Mr. Griggs asked Mr. Howard how notice was given to the neighborhood when they were soliciting the neighborhood's input or when they were offering to share information with the neighborhood. Mr. Howard said that for the design charette; there were specific letters. Mr. Griggs then asked if they were keeping everyone within a certain radius, informed by mail. Mr. Howard said that the design charette was not 100% participation; those participants were "hand picked" (selective number). Mr. Griggs apologized for interrupting, and then asked if Mr. Howard could tell him how often the direct neighbors (who testified at the hearing), were contacted; when were they contacted; and how much of an effort they made to let them know what was going on. Mr. Griggs stated that he knew that it was in the newspaper; and people should have taken it upon themselves to find out what was going on next door; but he wanted to know what they did to help keep them from being surprised after they had gotten to a certain stage. At this time, Ms. Lyons replied that the very first thing was the design charette that Mr. Howard mentioned; there was a specific letter sent out; and in the packet was a copy of the letter that was sent to their immediate neighbors, Lucy Points and Mick Jefferies. That was sent on March 17, 2011 for the charette that took place on April 11, 2011. She said that they did not participate in that. She then said that the next opportunity, when they sent a specific invitation, was November 16, 2011 for the breakfast that was held at the Living Arts and Science Center; the designs were put up on the website (as mentioned); there have been numerous articles, GTV3 features, and specific presentations were made to the neighborhood association as well. Mr. Griggs then stated that he was convinced that they were reaching out to the neighborhood.

Mr. Howard then stated that the point that he was trying to make with the design process was that there was involvement, and he wanted to point out that the Living Arts and Science Center is a non-profit, and this is a big issue. He said that as they go through the process and the cost change curve increases; it is a very sharp curve, which is where they are now- in construction documents.

Mr. Howard at this time displayed the site plan on the overhead projector and stated that he wanted to explain what is going on with the site plan. Mr. Howard explained that the Kincaid mansion is an 11,085 square-foot, 2-story space. He said they have eliminated the parking along the front of the Kincaid mansion; parking has been moved to Fourth Street; they have provided much greater connectivity into the neighborhood.

He said that the plan also features extensive landscaping and gardens, to include a rain garden that takes care of storm water on the property.

Mr. Howard said that with this large addition, they were able to reduce the impervious area on site by 12.8%. He went on to say that, with regard to the plan itself, they have met the zoning requirements in terms of building setback, and they have met zoning requirements in terms of building height.

As Mr. Howard displayed the next exhibit (2A), he stated that he wanted to speak directly to the character of the residential neighborhood; the architect and his staff went to great lengths to incorporate the building and the structure into the neighborhood. He said that, with the height of the proposed structure in relation to other proposed residential buildings in the neighborhood, all of this was taken into account with regard to neighborhood character.

Mr. Howard then noted on the exhibit that with their proposed building along Campsie Place; the architect has taken great strides with regard to matching the cottage building with the first-story line of the proposed building; also with the other two-story residential buildings, matching the height of those buildings. He said that the building on the east side is actually the east side of their direct neighbor, and is approximately a foot taller than they are. Mr. Griggs then asked Mr. Howard to go back to his previous drawing. He then said that between the LASC and the Jefferies' house and the huge tree in the middle, there is also a columnar tree next to the building. Mr. Howard said that, Mr. Jefferies had met with Ms. Lyons to voice his concern over that wall, and the columnar tree is part of the proposed landscaping. Mr. Griggs noted that he didn't see any landscaping on the drawing that was on the site plan. Mr. Howard then referred to exhibit 2B, and explained that what they are proposing along the side wall are 9 columnar European hornbeams; and they are willing to add that as a third condition for this plan.

He went on to say that it also needs to be noted that on the other side of the wall are architectural elements where they don't want windows (there is a planetarium on the inside on that wall, as well as an art gallery); and those are two spaces that one does not want exposed to natural light.

Mr. Howard then referred to exhibit 3 with regard to the hornbeams. He said that the pictured showed actual hornbeams. Hornbeams are one of those plants that can handle the kind of trimming that would be needed, which makes it even tighter and more dense. Chairman Stumbo asked Mr. Howard how tall the

hornbeams get. Mr. Howard said that typically, they top out at 60 feet. Chairman Stumbo then asked how large of a tree he proposed. Mr. Howard noted that what he had shown on the exhibit is a 25-foot height, which is what they are proposing. Mr. Griggs then asked Mr. Howard if the hornbeams are deciduous. Mr. Howard said they are deciduous, but they have a very tight branching pattern, and that adds character in itself. He said they could offer pine trees; but they feel that the hornbeam could provide more year round interest, especially with the green backdrop of the building.

He said the other thing he wanted to mention was that that side of the building has been considered more thoughtfully. The intent is to not have it like a blank wall; the architect is using a "tongue in groove, cypress siding" that would be stained.

Mr. Howard then exhibited a view of the property line of where the building is proposed, which is one foot off the setback line, which is within the requirements of the Zoning Ordinance. He stated that he thinks this should be approved because the Living Arts and Science Center has been the same use in the neighborhood for over 40 years; the zoning requirements, both for building setback and building height, have been met; they are adding additional landscaping as a condition; and the Planning staff has reviewed the plan and recommended approval.

Ms. Lyons returned to the podium and said that she wanted to mention a couple of things regarding timing. She said the LASC has a very large programming schedule (they provide over 1500 separate events a year), and a large part of that is during the summer months. They were looking at everything being ready, in place, and to be able to move forward and break ground early this spring so that they can then be ready in spring 2015. She went on to say that many of their donations have been given to them with that knowledge, that hope, and the suggestion that they are moving forward. She said that it was not something they are raising money for to happen in the far distant future; they are going to see a return on their support of the facility.

Ms. Meyer asked if this was the first time Ms. Lyons was aware of the depth of the opposition from their neighbors. Ms. Lyons said that she received communication from Mr. Jefferies at the very end of December of 2013 (which she had attached to the Board's packet), and she responded to him immediately; they met for the first time in that regard on January 3rd. She then immediately contacted their architects about Mr. Jefferies' concerns (which sounded like to her a beautification issue), who in turn contacted LASC's landscape architect, and he made the suggestion about the hornbeams. She sent that suggestion to the Jefferies and she didn't hear anything back from them until the Monday prior to the hearing. At that time (Mr. Jefferies) made a suggestion about a wall garden. The hornbeams are one idea, but maybe a whole living garden on that wall might be a suggestion. She said they talked again the Wednesday prior to the hearing, and then it was a little more involved (no longer just beautification; it was the design of the wall). She spoke with him again the night prior to the hearing, in another effort to talk with Mr. Jefferies, and she had further suggestions; but at that point, Mr. Jefferies' issue was proximity of the building- it was too big, too close. She said that she did note to Mr. Jefferies that she didn't think she would adequately be able to prepare by the hearing for that because his complaint had changed. She went on to say that she did feel that they made a strong effort to involve the community.

Mr. Glover asked Ms. Lyons if she thought this was an aesthetically pleasing building for this neighborhood. Ms. Lyons responded affirmatively. Mr. Glover then asked how old the historic building is. Ms. Lyons said that the building was built in 1847. Mr. Glover then asked the architects what the projected life span of this new building is. Mr. Martin Brummer, architect, said that the building should last without any maintenance for the first 20 years. Mr. Glover then asked what the projected life span of the building's proposed addition was. Mr. Brummer said that he supposed it should go approximately 40-60 years.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried 4-1 (Glover opposed) (absent: Moore and White) to **approve C-2014-1: THE LIVING ARTS & SCIENCE CENTER** - appeals for a conditional use permit to expand the existing facility (community center and accessory parking) in a Planned Neighborhood Residential (R-3) and a High Density Apartment (R-4) zone, at 362 (aka 364) N. Martin Luther King Blvd. (Council District 1), based on the staff's recommendation and subject to their two conditions, and adding a third condition as follows:

3) The addition of landscaping on the southeast side of the addition, as shown on the exhibits during the hearing.

*Note: Chairman Stumbo declared a brief recess at 4:20 p.m. The meeting reconvened at 4:27 p.m. with the*

*same members in attendance.*

At this time, Chairman Stumbo announced that there was a request from Mr. Donald Todd to hold a revocation hearing regarding Boone Creek. Chairman Stumbo stated that he wanted to go on record that it is not a hearing. He said that he would allow Mr. Todd, Mr. Murphy, and staff to speak; but there would be no witnesses called.

Mr. Donald Todd, Todd & Todd, PLLC, said their first basis in asking for a revocation hearing is to ask for the Board to consider the statute KRS100.237 (sub paragraph 4); it provides for administrative examination. Staff is to review conditional uses (the statute says these reviews should be conducted annually), and if there is a finding that the conditions are not being met or the property is being used other than what was originally permitted, then to bring this matter before the Board. He said their first argument is that there is a statutory basis for this. He said in addition to that, he believed that they have done a fairly good job in communicating with the Board and with staff as to their need for a revocation hearing. He noted that this case has had 2 or 3 hearings prior to this. He went on to say that in February of 2013, after a lengthy letter of complaint, there was an investigation. A NOV letter was issued on May 8, 2013, and then a formal hearing was conducted. After four or five hours of consideration, the Board made the finding of fact that there was a violation; that case was subsequently appealed to the Circuit Court, along with the other issue. At that point in time, the Boone Creek Association asked the Board whether or not a revocation hearing would be conducted. There was some debate back and forth, and ultimately the process was such from the neighborhood association's perspective, that the courts had taken the two cases. They had entertained them based upon the appeals filed, and they (the neighborhood association) assumed at that point that the matter would wait for the courts to finish.

Mr. Todd noted that he had sent the Board a copy of the order signed by Judge Ishmael. He stated that the particular order indicated that, in addition to the zip line question (paragraph 2), "the property shall comply with the 2000 conditional use permit; and shall comply with the directives of the Notice of Violation issued on March 8, 2013, which is incorporated by reference; and further, that this injunction shall remain in effect pending final adjudication of the appeals." He then said that it was their clear review of the order that he was to decease and desist from any activities related to the Anglers club that were not in compliance with the original conditional use permit granted to him. Mr. Todd stated that they have provided a number of instances to where his activities at the site have far exceeded what was granted to him in 2000 (advising that he had provided a list via email and postal mail). He also said that, in addition, he has provided the Board with a package of the advertisements, which have still continued to the present. At this time, Mr. Todd presented exhibits of the advertisements on the overhead projector as he explained where they believe to be violations of Boone Creek. Mr. Todd's first exhibit was a photo of the original site of the building, which is a non-conforming use in a development plan. He stated that it is located within the set-off from Old Richmond Road (the highway setback), and it is located over a gas transmission line. He pointed out that there was grass in the area and it was not being used for public access; however, since then, they have built a parking lot with new ingress and egress, without permits; exhibit #2, Mr. Todd stated that they have constructed (around the non-conforming use) a large deck and platform that are to be used by people who are accessing it, and has nothing to do with the Anglers club. He said that it is their position that one cannot expand a nonconforming use; there was no permit given for the construction of the improvement, no grading permits were ever obtained from staff for the construction of the parking lot or for the construction and of the facilities that they use for ingress and egress. He went on to say that he didn't think any permit has ever been obtained for any of the improvements that they have made.

Mr. Todd said; an additional point, under Article 26 of the Ordinance, there was supposed to be a tree preservation plan developed and submitted prior to the construction of any addition recreational facilities, including the zip line, which are not constructed in place.

He said that he thought he had given enough instances and factual circumstances that would support the Board's consideration of a revocation hearing. He said that he thought the neighbors have been active in the process, and they have always done whatever they were instructed to do. They've communicated with the Board and communicated with the staff, and they have provided documentation; they have done everything that had been asked of them.

Mr. Dick Murphy, attorney representing Boone Creek, stated that he had handed out, just before the meeting, a copy of their response to the Board. He said that they object to a revocation hearing. He went on to say that they are still working on the same terms that they have always operated under, under the 2000 permit that was permitted for the Anglers club.

He noted that Mr. Todd had mentioned that there was an injunction order that states that Boone Creek

Outdoors must operate in conformance with the 2000 permit, in addition to stopping the zip line tour. The tour was stopped immediately, and the Anglers club has continued to operate in agreement with the 2000 order. He stated that if that is part of the injunction order that Mr. Carey operates the Anglers club in conformance of the 2000 permit that is under the jurisdiction of Fayette Circuit Court to enforce that. He said if there is a problem, if he is violating that order that he comply with the 2000 permit from Fayette Circuit Court, only Fayette Circuit Court can enforce that. That would need to be brought back to Fayette Circuit Court, where they brought the issue of the zip line; it is not in the jurisdiction of the Board at this point.

Mr. Murphy also mentioned that, in the letter to the Board that was provided by the staff, it was stated that if the Planning Commission goes ahead with the current zoning request, then they request a revocation before the Board. He also noted that the Planning Commission has postponed it at Boone Creek's request; they have not postponed it permanently, but have postponed it for a month.

Mr. Murphy then addressed the letter from Mr. Todd, noting that it appears to ask the Board to issue an ultimatum or a demand to the Planning Commission. The letter states: "If the Planning Commission elects to continue, we want a revocation hearing." He said that he thought that was a bad precedent to set if one is telling another agency they ought to stop doing something, just as it would be bad for the Urban County Council to tell the Board to postpone a case. That's not something Boards do to each other and is not a good policy to set.

Mr. Murphy then went on to say that the matters before the Board, and even some of the handouts, have been reviewed and are in litigation in Fayette Circuit Court. Many have been before the Board previously; they have been presented to Fayette Circuit Court; Mr. Carey obtained permits for the decks on his property; and he (Mr. Carey) did not need a permit for the driveway that was originally paved and grown through over the years with weeds and plants so that it appeared green.

He then stated that he had printed the statute for the Board, which describes the only way a revocation can be ordered, and it is under KRS100.237(4). Mr. Murphy then read a couple of points in the statute in reference to complying with the conditional use permit and when a revocation hearing can be scheduled.

Mr. Murphy stated that he had a concern with precedent as well. He asked if any neighboring property owner could petition the Board directly, because they are mad at their neighbor, to revoke their prior conditional use permit. He said that is not the case and reiterated that the proper procedure, as noted in KRS 100, must be followed.

Mr. Todd returned to the podium noting that Mr. Murphy had said something to the Board that was a matter of law that he believed to be incorrect. He wanted to make sure that it was brought up. He said it was his understanding that letters were sent out to the staff complaining, outlining, and documenting, but no finding was ever made that there was insufficient evidence for a revocation hearing. He said he had never received any communication that a finding had not been made. He stated that they filed an appeal on the Circuit Court on the NOV, and they also filed an appeal to the 2010 case, and so those matters are before the court; they have now petitioned the Planning Commission for a zone change and the same conditional use permit, involving the same structures which are currently erected on the property; and he felt they were trying to circumvent the Board's decisions. He then stated that he thought Mr. Murphy's argument was inaccurate. Mr. Murphy responded to Mr. Todd's statement, stating that no report has been sent to the Board by the Administrative Official, which is a prerequisite of a revocation hearing. He said that he wanted to emphasize that there was statement made that they filed a zone change with an identical conditional use permit that they had before. He said that is not true; they filed a zone change from an A-R zone to an A-N zone, which is much more restrictive; it requires preservation of a natural area, and they did ask for a conditional use permit for commercial recreational use. He briefly explained the difference between the original conditional use request and the request filed with the zone change.

Staff Comments - Ms. Jones stated that they are trying to provide the best process that they can, and this interaction today has been difficult to deal with. She went on to say that there are currently two cases pending in Fayette Circuit Court that relate to Boone Creek. One is the appeal from the denial that the Board made in 2012 for the conditional use permit on the 200+ acre property that included a number of the things mentioned in this hearing. It was denied by the Board and appealed under the statute to Fayette Circuit Court, and it is currently pending; it's in front of Judge Ishmael, 3rd Division; the second case pending in Fayette Circuit Court is also in the 3rd Division under Judge Ishmael; and that resulted from a Notice of Violation. She said that it also includes the injunctive action that the Government pursued and filed and it also involved an appeal of the denial to accept an amended conditional use application by the Board in June 2013.

Ms. Jones stated that; in February 2013, there were numerous complaints made about the site; about things going up; about things relating to the conditional use. She said primarily; the zip line was driving the complaints, but there were other complaints mentioned and filed wit the Division of Planning. The Division of Planning reviewed them; the Division of Planning notified Mr. Carey and his attorney, Mr. Park. They responded to them; there was a disagreement between the Division of Planning and their interpretation of what certain terms in the Ordinance meant; what certain terms on the 2000 conditional use permit meant or allowed, noting that the Board said they didn't agree with the interpretation. On March 8, 2013, Mr. King issued them, a notice of violation letter, stating that they were not complying. Ms. Jones then said, as it is their right to do, they appealed to the Board; they did not agree with Mr. King's interpretation or his Notice of Violation. She said that the Board had a hearing about that; they upheld the violation. She stated that later on again, being reported to the Board and also checking through the Enforcement division, it became apparent that there were zip/canopy lines running; and the Notice of Violation, even though it was being appealed, was not being followed. Staff went to the Board and advised them of what was going on; stating that they did not think the notice was being followed, and gave the Board options to enforce the notice based on the complaints received and the things they were observing. She went on to say that staff talked to the Board about whether or not they wanted to revoke the 2000 conditional use permits. Staff talked to the Board about whether or not they wanted to pursue it as a criminal code violation; and advised they had even talked to the County Attorney about it. Staff told the Board that they didn't think that was a great option and talked to the Board about pursuing other options in terms of calling them back in front of the Board. Staff also talked to the Board about filing an injunction, and asking the Court to enforce the terms of the violation notice. Ms. Jones said that after the discussion, the decision was made; and the option was pursued to address the violation with the injunction. Staff did that; they filed the injunction with the Court; the Court set a hearing date; all parties were there; the Court allowed Mr. Todd to intervene on behalf of his clients; there was full 2-4 hour hearing. At the end of the hearing, Judge Ishmael issued an injunction, and he directed that the zip line stop. He also directed that the terms of the 2000 conditional use permit (that was the only conditional use permit on the property) be followed; and he also attached the Notice of Violation letter that Mr. King had written and wanted compliance with the terms of that letter. She added that there is one more action pending, which was an appeal to the Court of Appeals of the decision to issue the injunction.

Ms. Jones said that is where this is legally; there has been a zone change application filed; it has been through the Technical Committee; it has been through the Subdivision and Zoning Committees, and it was scheduled for the Planning Commission's docket for February 27th.

She then said that, under the statute, there is a provision that the Urban County Government has opted to utilize-the provision for a Planning Commission or legislative body (whichever one is administering the planning-in this case it is the Commission) to hear a conditional use or variance that is part of a zone change. She went on to say that it is statutory; they filed their conditional use with the zone change. She said that the conditional use is somewhat similar, but she had told both parties that she did not believe it is identical, and that is where that is. Ms. Jones said that if there are complaints related to the issues addressed in the injunction; then they are in a court-ordered injunction over that; however, if there are new complaints that are being alleged or were not addressed when the determination was made that the injunction was the way to proceed (she didn't know if staff had the opportunity to look at them or compare to what was received before), that is where this stands as of the date of the hearing.

Regarding the Notice of Violation that prompted the injunction, Ms. Jones said that there was not a finding that there wasn't evidence, because the Notice of Violation was issued; and it did include some other things besides just the zip lines that could be documented when they went down there with Planning and Enforcement staff to investigate it. Ms. Jones said that she also thought that it was disingenuous to say that neither the Board nor the Planning staff has addressed the complaints as they have come forward. She went on to say that they have spent an enormous amount of time responding to complaints; receiving emails; receiving letters and phone calls (some of which are not very nice) and trying to deal with them. Ms. Jones said that they were addressed with the Board when they discussed the best route to proceed in trying to enforce the existing violation notices.

Mr. King said that they were there to answer any questions that the Board might have.

Chairman Stumbo asked the Board if anyone had any questions for Mr. Todd, Mr. Murphy or for legal counsel.

Board Questions - Mr. Griggs stated that the Board is blocked by the Circuit Court's order, but apparently it can move forward with- in the Planning Commission's purview; and if the Circuit Court ordered the Anglers

club to operate under the conditions of the 2000 conditional use, he asked if they would be able (in the Planning Commission application) to enlarge those activities. He said it seemed as if the court had ordered things to stabilize for the time being with the 2000 conditional use, and that it doesn't seem right that they should be able to expand those conditions while it is blocked up in court. Ms. Jones replied that the injunction and the order of the Circuit Court went strictly to the enforcement of the Notice of Violation. Following the terms of the conditional uses as they applied, the notice of violation addressed everything that was deemed applicable. There was no other conditional use in place for staff to go and seek an injunction on. She said and they (Law Department and Planning Staff) interpreted that conditional use and determined that there were things that were being done and operated at the facility at Boone Creek that they did not believe were authorized by the conditional use permit. She said, to be clear, they were not saying that the conditional use was being violated in its entirety. There were certain things that they documented that they did not agree with, the first and foremost of those were the zip lines; but there were other things, and so they pursued that with the injunction. She stated that the issue, in her opinion, is that the zone change and conditional use permit that are currently pending is a separate matter; it is going to have the same process that any zone change with an intended conditional use is going to have. It's going to have a hearing; it's going to have a lengthy list of unresolved issues that are going to be put upon it and explored by that body, but it is different than is what is in the 2000 conditional use permit. She went on to say that what she understood, as to what the Board was being asked to consider at this hearing, was that the conditional use of 2000 seems to be being violated; and that is still the only conditional use that is "on the table."

Mr. Griggs then said that if they were to operate the Anglers club under the 2000 conditions, it seemed that it shouldn't be altered in the meantime. He said that they were not letting the Board take the conditional use away from them (Boone Creek), but they are letting another administrative body enlarge it. He asked if they (Boone Creek Outdoors) didn't stop the zip line, if they would have been in contempt of court. Ms. Jones replied affirmatively. Mr. Griggs continued, noting that if they are not operating under the 2000 conditional use, he (Mr. Carey) is also in contempt of court; and there is lots of evidence now from their advertising that they are not operating under the 2000 conditions. Mr. Griggs then asked if they were in contempt of court now. Ms. Jones stated that that was the judge's decision. Mr. Griggs said that the judge wouldn't even know about it unless staff brought it to his attention. Ms. Jones stated that that is possible. Mr. Griggs said that he wondered if they were going to bring it to their attention.

Mr. Griggs then asked if they can enlarge the 2000 conditional use through the Planning Commission under the court order that says they are only to operate under the 2000 conditions. Ms. Jones said that it is a separate application. Mr. Griggs stated that it is the same piece of property. Ms. Jones then said that she understood, and she didn't want to get into a debate about that at this hearing because that is one of the underlying issues; but the opinion has been issued; and the matter is going forth at the Planning Commission under the premise that it is a separate application and a separate zone change. Mr. Marx said that he wanted to elaborate on what Ms. Jones was saying. He said that the conditional use request that is pending with the Planning Commission and its association with the zone change is not a request to amend the existing conditional use; it's a totally separate application for a totally different conditional use. He went on to say that is why Ms. Jones described it as being separate; and it is truly separate-it's a different request.

At this time, Mr. Todd returned to the podium, noting that he agreed with everything that Ms. Jones had said in reference to her summarization and all the facts; however, they disagreed on whether or not the application was subject to the NOV and what was submitted to the Planning Commission. He believes they are substantially identical. He then said his position to the Board; though, is on the Judge's order. He said that Mr. Carey must comply with the terms and conditions of the conditional use permit of 2000; he (the judge) is saying that this remain in effect until it is adjudicated. Mr. Todd went on to say that the judge is saying that one can not do the things that they were doing, for which they went before the court; it doesn't say anything in the order as to whether or not a revocation hearing can be held; it is just saying that they have to abide by the conditional use permit. Mr. Todd said that for them to argue and say that they are precluded from a revocation on the conditional use permit, by reason of the court order, is wrong. He also said that this is the reason they are entitled to come before the Board; they are the same violations that were asserted in 2013 and the same things they documented (i.e., the advertising; the hotel circumstance; the 60-member group limitation, which is being violated). He stated that those are the same things that they filed back in 2013, and they are the same things today. Mr. Todd said that Mr. Griggs asked the right questions; if they are still doing this, why they aren't going back to court.

Mr. Griggs then asked Mr. Todd if he agreed with Mr. Murphy's summary of the requirements that need to occur for the Board to be allowed to call for a revocation hearing; i.e., that the staff needs to inspect and find the violation and report it in writing to the Board; because that seemed to be what was written down. Mr.

Todd stated that the statute states that it is their obligation to inspect a conditional use annually. Mr. Griggs then said that his question was whether the right events occurred so that the Board can take action. It was his opinion that there is some logic to saying that disgruntled neighbors shouldn't be able to just come in and ask for a revocation hearing. Mr. Todd said that he would agree with that, but this was not just some disgruntled neighborhood that has walked in on a whim; this has been a 1 ½ - year proposition, and they have done exactly what they were told to when they called and complained. Mr. Griggs stated that he was just trying to figure out if staff had "fallen down" on their duty to report to the Board that violations had occurred, or if they didn't have the evidence and reported that they didn't. Mr. Todd said that they gave staff the evidence and staff reported it to the Board.

Mr. Murphy returned to the podium and commented that as of the date of the hearing, their website says that the zip line is shut down; no one can use it. He went on to say that in the application of the zone change (which is how he got involved), which is a change to a different zone, they have stated that the Anglers club would continue to operate as it had under the 2000 plan; they are also asking for a conditional use permit to operate the canopy tour. He stated that they are not asking to enlarge the Anglers club, either as part of the zone change or the conditional use application. He also said that as he understood it, the staff does inspect conditional use permits annually, as required; and the reason the zip line was stopped by injunction is because the judge said that it was beyond the scope of the year 2000 conditional use permit. Mr. Murphy said that if there was anything else beyond the scope of the 2000 conditional use permit; that could be reported to the judge as well, just as the zip line was reported; because the judge has ordered that they comply with the 2000 conditional use permit.

At this time, Chairman Stumbo asked staff if they had anything else to add.

Mr. King said that if there are any allegations that they are operating in violation of the injunction, then the staff would investigate. He said that he has not received any report or allegation regarding this. He went on to say that he personally checked the website after the injunction; and from what he saw (at least in terms of the website); he seemed to be compliance. If it has been changed or more has gone on, he hasn't seen it. Mr. King went on to say that if they did investigate it and determined that it is in violation, his next step would be to confer with counsel on whether the best approach is to come and report to the Board ok as is or to move on to the injunction and back to the court; and have the court rule whether it is in violation or not. He said, again, that is what was done the first time: staff issued a notice of violation and they appealed it. So until the day of the hearing; when the Board upheld the Notice of Violation; is when truly there was a determination (at the local or administrative level) that there was a violation; they didn't comply with it; they came back to the Board. Mr. King said that if the Board had chosen the revocation route, staff would have prepared the requisite report, which basically would have been the Notice of Violation and the Board's action upholding it; but, again, the decision was made to pursue it in court.

Mr. Griggs stated that if the objectors bring information to the staff that cannot be verified or found on the website, he believed that it should be brought to the Board that it is alleged, but not verified. He said that he didn't believe that the Board should not act because the staff doesn't find a violation. Mr. King stated that it is difficult, and staff will try to do those things. Mr. Griggs stated that he thought staff needed to be the "gate keepers" on the conditional use revocations; however, at this point, it is past the need for a "gate keeper," but he thought that this should be settled. He went on to ask, if the violations exist, and they can be verified or are suspicious, if staff would recommend having a revocation hearing; or did staff think that it was going to be blocked by the Circuit Court order. Mr. King said that he would confer with counsel and seek their advice as to what is the best avenue to approach the situation. Mr. King went on to say that the basic decision is whether it is most effective to continue with the matter as it is in court, versus coming back and starting a fresh approach to compliance. Mr. Griggs stated that some people would think that this could initiate a whole other lawsuit if a revocation hearing is held, and it was successful; but there is going to be lawsuit either way if there is one party who doesn't feel like they are not being treated fairly. Ms. Jones said that she felt certain that there is going to be a lawsuit; no matter what is done; however, that is not the staff's concern. She said that the staff's concern is trying to gain compliance, and she reiterated Mr. King's statement. She said that the Board has received information that staff has not; staff has not had the opportunity to evaluate that information - i.e., it's the same as in the injunction; what's not the same; what's new; what's different. The staff has had no opportunity to do that. Mr. King added that if there is a written allegation of a Zoning Ordinance violation provided to the staff, they are charged by Ordinance to investigate it to the best of their ability, which is what has been done in every case.

Mr. Griggs apologized for seeming so aggressive. He said that he hated that the date that is coming up with the Planning Commission could be affected by the revocation of their 2000 conditional use permit, and he thought that they were related. He said that he hated that the work was going on with the Planning Commission and it seemed like they (the Board) didn't have a "fair shake" at this hearing because of the

injunction. Ms. Jones stated again that she didn't know how long the violations had been going on, but it has been several months (in the range of 5 or 6 months) since the injunction had been issued. If the violations were going on, she didn't know where they were; but they (staff) didn't get notification of them, and she couldn't help the timing; she couldn't help the timing that the zoning process is moving forward as it should under the Ordinance and the complaints have just now come to light. Mr. Griggs said that everyone thought that it was locked up in Circuit Court; so the fact that it is before the Planning Commission was a big surprise to the Board and the neighborhood, which is what seemed unfair.

At this time, Chairman Stumbo asked if there was a motion to set a revocation hearing regarding the Anglers club.

Mr. Griggs asked Mr. Todd if he thought initiating a revocation hearing without having the steps performed by the staff would cause it to "blow up" in everyone's face. He said he wanted the action of the Board to be legitimate. Chairman Stumbo stated that he didn't think it was non-legitimate and believed he had already asked Mr. Todd that question. Mr. Todd said their perception was that the staff had all the same information; and they assumed that, as the Enforcement officers, they were keeping tabs on it and observing it. Mr. Griggs then asked if Mr. Todd would want a revocation hearing, or would he rather go through the proper steps (if they haven't been done) and have a revocation hearing then. He went on to say that he thought that having a revocation hearing is not a presumption of guilt or innocence by anyone; it's just a hearing. Mr. Griggs said that he would make a motion to have a hearing, but didn't think they should do it if the steps haven't been done to proceed with it. Mr. Todd said that he wanted to do it correctly; if there is some procedure that counsel is not happy with, he wanted to make sure it that was done appropriately first. He then said that it shouldn't take a great deal of effort to investigate it; because they are the same violations that have been going on for over a year, and they wanted a revocation hearing; they wanted to be heard.

Ms. Meyer stated that she wanted to do what was right and abide by the law. She agreed with Mr. Griggs and said that if she could make a motion and be within the law, she would; but having had the discussion at this hearing, she didn't think procedurally that the Board could do that because of the injunction that is currently before the Court. Ms. Meyer then asked if she was interpreting it correctly. Ms. Jones responded that she could not really answer that; what she understood was that the Chairman and the Board were sent a letter with some information that she received Monday morning from Mr. Todd. She said that since that time, she understood that the Board had received a lengthy list of alleged violations that are currently going on out there. That was not sent to her, and she hadn't had time to review it. It was not sent to staff, and she didn't think they've had time to review it. She then said that if there are allegations that have not been raised since the injunction was issued that have been ongoing, she thought that it would be most prudent for the staff to get them and to see what they are in full, review them and investigate them. Then they can compare what they think is addressed by the judge's injunction to the allegations that are being made; what's not, and counsel could advise appropriately; but they were not in a position to do that at this hearing.

Ms. Meyer then asked, moving forward from this day, and assuming counsel gets the information that is needed, what the time frame is. Mr. Todd said that the complaints are the same as is in the NOV case. It's not new evidence; it is the same. Ms. Jones then stated that there were specific things that they presented to the judge; there have always been a number of allegations that have not been the same as what the staff has found to be documented, and provable, under the Ordinance violations. She went on to say that if they were all the same, some of those things that were alleged a year ago were addressed with the Board, and counsel stated that they could not find the proof or evidence of those violations; counsel brought to the Board the ones that they did. She then said if they are saying that everything that's out there now is the same as it was before, then some of those have been addressed already and it is in the injunction; but if they are saying that now since the injunction there are new allegations, then that may be something different; and it cannot be assessed until they see it.

Ms. Meyer then asked if the Board would be able to see what was presented to the court. She stated that they did not have a clear understanding; beyond the zip line issue, as to what was taken to the court. Ms. Jones said that that is probably what they would do once they saw what the alleged violations were. In other words; they are not going to go back and re-discuss things that they have already investigated and have had the court address; but if what they had the court address is now being violated, then they are going to look at that.

Mr. Todd stated that there were two options; one would be to go back to the court on a motion to hold for contempt of court for failure to comply; or they have a basis to bring it to the Board for revocation because the injunction does not prohibit the Board from revoking the conditional use. It only prohibits Boone Creek from violating the Ordinance.

Chairman Stumbo stated that there wouldn't be a motion made for a revocation hearing. He said that he didn't think that the Board was comfortable scheduling a revocation hearing based on the statute, and what had been discussed; therefore, there will not be a revocation hearing set at this hearing.

Mr. Todd re-approached the podium and stated that he handed Mr. King a letter of complaint and will meet with him next week at Mr. King's convenience, with his clients, and will go through of each violation and ask staff to inspect it.

Mr. Murphy then stated that he would like to be notified of any of these items because he was not notified the last time. He also said that he wanted to emphasize that it is their belief that the Boone Creek Anglers club is operating in full compliance with the 2000 permit. He went on to say that there has been a lot of talk about violations here and there. There have been no violations established. It is operating the same way it always has; but they would be happy to cooperate with the staff to look into this, because they are confident that they are operating in agreement with the 2000 conditional use.

Mr. King stated that since they (Planning) are the staff for the Board, and the staff for the Planning Commission as well (and equally attendant to both of the Boards), that under the statute of limitations imposed on the Planning Commission to hear applications, this is the last meeting that this Board will hear or hold until the Planning Commission has a hearing on the zone change and conditional use application that have been filed. He then said that if the Board, as a "Board", has something that they wish to communicate to the Planning Commission (unless there was a special meeting called), this would be their last opportunity. He went on to say that it did not mean that when the Planning Commission hearing on the 27th occurs, it couldn't be postponed; but if the applicant insists on a hearing, there will be a hearing that day.

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time. None were presented.

V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time. None were presented.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be February 28, 2014.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 5:39 p.m.

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Barry Stumbo, Chair

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James Griggs, Secretary